

General Information Letter: Illinois does not tax pensions of nonresident individuals.

January 3, 2006

Dear:

Your letter dated July 6, 2005 was received by the Legal Services Bureau on December 19, 2005. In response to your letter, please be advised that Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state in pertinent part as follows:

I am seeking a written opinion on the taxability of deferred compensation earned in Illinois, but received by a beneficiary who is not a resident of Illinois.

Mr. Z lived and worked in the state of Illinois for over 30 years. During that time he was contributing to a 403(b) deferred compensation program. Mr. Z passed away unexpectedly on April 11, 2005. His mother, Mrs. Z, was named as a beneficiary on the 403(b) account. Mrs. Z is a resident of the state of Michigan.

When Mrs. Z was filing papers to receive her share of the funds in the 403(b) account, the pension company requested that she request a 'Tax Waiver' from the State of Illinois in the amount of approximately \$10,500.

My question is two-fold. 1. Is a 'Tax Waiver' appropriate? 2. Will Mrs. Z have to pay tax to the State of Illinois on the proceeds from this 403(b) account in the year that the money is received?

RULING

For purposes of this letter, we assume by "403(b) deferred compensation program" that you are referring to Internal Revenue Code Section 403(b).

Section 502(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 *et seq.*) sets forth the requirements for filing Illinois income tax returns. That section states in pertinent part as follows:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

- (1) For which such person is liable for a tax imposed by this Act, or
- (2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this section, a nonresident of Illinois is not required to file an Illinois income tax return unless the nonresident is liable for Illinois income tax. A nonresident is not liable for Illinois income tax where the nonresident does not have "Illinois net income" as defined in IITA Section 202. Under IITA Section 202, Illinois net income is defined as that portion of the taxpayer's base income (as defined in IITA Section 203) which is allocable to Illinois under the provisions of Article 3 of the IITA, less certain deductions.

The computation of base income in the case of individuals starts with federal adjusted gross income (AGI). Base income is derived by adjusting the taxpayer's AGI to take into account numerous statutory addition and subtraction modifications. (IITA § 203(a)).

Title 4, Section 114 of the United States Code (4 U.S.C. 114) prohibits a state from imposing an income tax on the retirement income of a nonresident. The term "retirement income" is defined at subsection (b) of Section 114. In addition, IITA Section 203(a)(2)(F) provides a subtraction modification for amounts included in AGI pursuant to Internal Revenue Code Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a) and 408, as well as amounts received under the provisions of a retirement plan for government employees. As a result of these provisions, most pension income is not included in Illinois base income.

Applying the foregoing to your case, if a person is a nonresident of Illinois, and his or her income consists solely of pension income, then that person would not have any Illinois net income. Accordingly, he or she would not be required to file Form IL-1040 or Schedule NR.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
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